

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**ALASKA TELEPHONE ASSOCIATION
PETITION FOR CLARIFICATION AND WAIVER OF LIFELINE MINIMUM
SERVICE STANDARDS**

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I. INTRODUCTION

Pursuant to Sections 1.2 and 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Alaska Telephone Association (“ATA”) hereby petitions the Commission to clarify or waive a few requirements of the Lifeline rules in order to permit Lifeline providers in Alaska to offer affordable broadband services to eligible Lifeline program participants. In recalibrating the Lifeline program for the 21st Century, the Commission correctly recognized that “[a]ccessing the Internet has become a prerequisite to full and meaningful participation in society,” including “access[ing] the Internet to research issues, check assignments, and complete homework,” and going online to access health care information and “stay in touch with health care providers.”² In remote Alaska—Alaska outside of Anchorage, Fairbanks, and Juneau³—the barriers of distance make this access even more valuable. Small villages can be isolated from larger communities and inaccessible by road, but over the Internet, Alaskans can reach educational resources, health care information and specialists, news, entertainment, and the other content and services that others take for granted.

The *Lifeline Modernization Order* took important steps towards making access to the Internet a reality for low-income households. But a few of the well-intentioned rules around

¹ 47 C.F.R. §§ 1.2, 1.3.

² *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration 3962, 3963 ¶ 1 (2016) (“*Lifeline Modernization Order*”). Although petitions for review were filed in the D.C. Circuit, the court granted the Commission’s motion for a voluntary remand. *See Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, No. 16-1170, Order (D.C. Cir. Apr. 19, 2017); *State of Wis. et al. v. FCC*, No. 16-1219, Order (D.C. Cir. Apr. 19, 2017).

³ *See* 47 C.F.R. § 54.307(e)(3)(i) (defining remote Alaska as “all of Alaska except (A) The ACS-Anchorage incumbent study area; (B) the ACS-Juneau incumbent study area; (C) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and (D) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Mat[a]nuska Telephone Association incumbent study area”).

precisely which broadband services are eligible for the Lifeline discount have the effect in remote Alaska of making broadband unavailable. Specifically, in some areas, 3G mobile networks are not yet deployed, fixed service of 4 Mbps download and 1 Mbps upload speeds (“4/1 Mbps”) is not yet available, and additional usage capacity can be expensive in areas fed by satellite or microwave backhaul.

ATA requests that, given Alaska’s unique circumstances—including its vast geography, seasonal employment cycles, and still-developing broadband networks—the Commission clarify that an eligible telecommunications carrier (“ETC”) in remote Alaska is “providing” mobile wireless 3G service to a Lifeline subscriber if that subscriber has full access to the carrier’s 3G network, even if the 3G network does not cover the subscriber’s residential or billing address. In addition, ATA asks the Commission to waive the requirement to provide 3G service in areas of remote Alaska where ETCs have not yet deployed 3G service. These actions would allow ETCs to continue to make Lifeline broadband available in remote villages while ensuring that Lifeline subscribers have access to at least 3G mobile broadband service when they are in a community or work or school area that has 3G or better coverage.

For fixed Lifeline broadband services, ATA asks the Commission to waive the fallback minimum speed standard of 4/1 Mbps in areas of remote Alaska where such speeds are not available. Even if a Lifeline-eligible household in one of these areas decides that the best use of its Lifeline benefit is to reduce the cost of fixed broadband, that option is not available to it under the current rules. In addition, ATA requests a waiver of the requirement that providers of fixed Lifeline services that do not offer broadband speeds of at least 10 Mbps downward and 1 Mbps upward (“10/1 Mbps”) (or the current minimum speed standard) must offer their “highest performing” broadband service as their Lifeline offering. Unfortunately, in many cases, this

offering costs hundreds of dollars because ATA members offer increasing amounts of usage capacity in the retail market, which has a significant upward impact on the price of the service. The purposes of the Lifeline program can only be met if the broadband Lifeline service is available and affordable to eligible participants. ATA therefore requests that the Commission waive the 4/1 Mbps fallback speed standard and the “highest performing service” rule to permit ETCs in remote Alaska to offer available broadband services at affordable prices.

These modest requests will serve only to fulfill the purposes of the Lifeline program—to ensure that “low-income” Americans in “all regions of the Nation” have access to telecommunications and information services.⁴ They do not increase the potential for waste, fraud, and abuse, nor do they affect commitments made under the Alaska Plan. Rather, they bring the selection of Lifeline offerings in remote Alaska closer to that available elsewhere in the country.

II. BACKGROUND

As the Commission is well aware, remote Alaska has not yet achieved the levels of fixed or mobile broadband availability seen in most parts of the country. ATA members are working to address this disparity. In August 2016, the Commission adopted the Alaska Plan to provide fixed amounts of high-cost support to maintain and improve fixed and mobile broadband services in remote Alaska, without increasing the size of the Fund and without diverting any additional support to Alaska.⁵ The carriers participating in the Alaska Plan committed to bring fixed service of 25/3 Mbps or better to nearly 47,000 locations. By the end of the Alaska Plan’s

⁴ 47 U.S.C. § 254(b)(3).

⁵ See *Connect America Fund; Universal Service Reform–Mobility Fund; Connect America Fund–Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 10,139 (2016) (“*Alaska Plan Order*”).

ten-year term, 82 percent of locations in eligible areas will have access to 10 Mbps, and 61 percent will have access to 25/3 Mbps.⁶ On the mobile side, participants committed to upgrade to provide LTE to over 120,000 remote Alaskans.⁷

Participants are already working to meet their commitments to provide these much-needed improvements. Several ILECs, including OTZ Telephone Cooperative, Inc., TelAlaska, Arctic Slope Telephone Association Cooperative, and Matanuska Telephone Association have deployed fiber this year, and ASTAC has upgraded wireless service to 4G in six areas.

However, both during the implementation of the Alaska Plan and, for some communities, even at the end of the Plan, areas will remain either unserved by any broadband service or served, but not at the then-current minimum speeds required for a broadband service to qualify as Lifeline.

⁶ See Letter from Daniel B. Lindgren, KPU Telecommunications, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 16-271 (filed Dec. 8, 2016); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Dec. 6, 2016) (final commitments of Copper Valley Telecom and Matanuska Telephone Association) ("*ATA Letter*"); Letter from Julie A. Veach, Counsel to General Communication, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Nov. 29, 2016) (UUI final commitments); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Nov. 22, 2016) (final commitments of Bush-Tell, Inc., Cordova Telephone, Interior Telephone Company, Mukluk Telephone Company, Inc., and Nushagak Telephone Cooperative); Letter from Stephen Merriam, Arctic Slope Telephone Association Cooperative, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 16-271 (filed Nov. 17, 2016); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 9, 2016) (final commitments of Adak Telephone Utility, Bristol Bay Telephone Cooperative, Circle Telephone & Electric, LLC, and OTZ Telephone Cooperative); *see also Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaska Rate-of-Return Companies*, Public Notice, 31 FCC Rcd. 13,347, 13,353 (Wireline Comp. Bur. 2016).

⁷ See *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, Public Notice, 31 FCC Rcd. 13,317, App. A at 13,321-32 (Wireless Telecomms. Bur. 2016) ("*Alaska Plan Wireless Approval PN*").

ATA is concerned that the Commission's 2016 *Lifeline Modernization Order* and rule amendments as written may have unintentionally put fixed and mobile broadband out of reach of remote Alaskans who qualify for Lifeline service, either by not permitting ETCs to offer their broadband services as Lifeline offerings or by requiring ETCs to offer only their most expensive services to Lifeline customers. The thrust of the *Order* was to "modernize Lifeline for the 21st Century to help low-income Americans afford access to today's vital communications network—the Internet, the most powerful and pervasive platform in our Nation's history,"⁸ yet some low-income Americans in remote Alaska will be left out of this effort absent Commission action.

As to mobile wireless services, the Commission amended the rules to require ETCs to offer mobile broadband using 3G or better technology, and possibly faster speeds in the future.⁹ The mobile nature of the service, however, makes it unclear whether a specific individual has 3G service or not. For example, a Lifeline customer may have 2G service at home but 3G service at his or her place of employment. Or a Lifeline customer may have 2G service at his or her billing address but 3G service where he or she lives and goes to school or serves in the military.

In some areas of remote Alaska, unfortunately, a lack of 3G service is likely to persist for some time yet. Even under the Alaska Plan commitments, more than 15,000 persons in the service areas of Alaska Plan mobile wireless participants are expected to remain on 2G

⁸ *Lifeline Modernization Order* at 3963 ¶ 1.

⁹ See 47 C.F.R. §§ 54.408(b)(2)(i) ("The minimum service standard for mobile broadband speed will be 3G."); 54.408(c)(2)(i) (providing that the Wireline Competition Bureau shall update the mobile speed standard "when, after analyzing relevant data, including the FCC Form 477 data, the Wireline Competition Bureau determines such an adjustment is necessary"); *Lifeline Modernization Order* at 3997 ¶ 96 ("We conclude that, to claim Lifeline support for a mobile broadband service, a provider must provide to the Lifeline subscriber a service advertising at least 3G mobile technology for at least the amount of data usage allowance specified by the minimum service standards.").

technology.¹⁰ And the commitments do not specifically address the populated census blocks where less than fifteen percent of the population is currently covered by any form of CMRS. Those areas will be the focus of a reverse auction, but the timing of the auction—much less the timing and scope of the resulting deployment—remain unknown.¹¹

For fixed services, the Commission took similar action in the *Lifeline Modernization Order* to establish minimum standards for broadband. Relevant here, the speed standard is currently 15/2 Mbps, effective December 1, 2017.¹² In contrast to its approach to mobile wireless Lifeline services, the Commission adopted an exception for ETCs that do not offer service meeting the minimum standards but do offer a service providing speeds of at least 4/1 Mbps. An ETC offering a service of at least 4/1 Mbps may offer as Lifeline broadband “its highest performing generally available residential offering, lexicographically ranked by: (i) Download bandwidth; (ii) Upload bandwidth; and (iii) Usage allowance.”¹³ The Commission adopted this exception so as not to exclude residents of areas lacking the current minimum speed standard from the Lifeline broadband program, but created the “highest performing service” standard to prevent these Lifeline customers from receiving “second-tier” service.¹⁴

In many parts of remote Alaska, even service at 4/1 Mbps is not yet available, removing the possibility of subscribing to fixed Lifeline broadband for eligible households in these areas. In other words, they will not be receiving “second-tier” service but “no-tier” service. In addition,

¹⁰ See *Alaska Plan Wireless Approval PN*.

¹¹ See *Alaska Plan Order* at 10,173-74 ¶ 106.

¹² See 47 C.F.R. § 54.408(b)(1)(i); *Wireline Competition Bureau Announces Updated Minimum Lifeline Service Standards and Indexed Budget Amount*, Public Notice, 32 FCC Rcd. 5087, 5088 (Wireline Comp. Bur. 2017).

¹³ 47 C.F.R. § 54.408(d)(3).

¹⁴ *Lifeline Modernization Order* at 4002 ¶ 111.

the “highest performing service” can be prohibitively expensive for the Lifeline-eligible household. The costs of ETCs’ fixed broadband offerings in remote Alaska are driven in large part by two variables—speed and usage allowance. In areas where an ETC does not offer 15/2 Mbps, the rules require that it offer as Lifeline broadband only its broadband service with the highest speed and the largest usage allowance that it offers at retail. In some cases, with middle mile capacity limited and costly, that generally-available service costs \$300 per month or more.¹⁵ Even with the Lifeline discount, such a service is going to be out of reach for low-income households. As a result of the Alaska Plan, in some cases these services are being upgraded to 10/1 Mbps or better; in others, the Alaska Plan provides support to maintain current service levels or upgrade to speeds less than 10/1 Mbps.¹⁶

ATA members want their services to be fully available to low-income Alaskans in their service territories. At present, the Commission’s approach to minimum standards for mobile wireless and fixed broadband may prevent, rather than assist, remote Alaskans’ efforts to get on-line. A simple, limited clarification and targeted waivers will help close the Digital Divide for Lifeline-eligible consumers in remote Alaska. The waivers would continue as long as the relevant conditions persist; once an area is upgraded to meet the then-current speed minimums as a result of the Alaska Plan or otherwise, the waivers would no longer be needed in the upgraded area.

¹⁵ See Bristol Bay Internet (“6M Down / 1M Up with 100 Gigabytes/month for \$300.00/month”), <http://www.bristolbay.com/internet.html>; Nushagak Cooperative Internet (“6mbps/2mbps with 100 Gigabyte of usage* for \$337.79/month”), <http://www.nushtel.com/cable-internet.htm>; United Utilities, Plans We Offer (offering 6 Mbps/2 Mbps Premium with 100 GB for \$299 when bundled with phone service), <http://www.uui-alaska.com/wp-content/uploads/2017/01/Internet-Plans-DSL-WIFI-1-2017-crop.jpg>

¹⁶ See, e.g., *ATA Letter* (attaching letter from Copper Valley Telephone showing proposed upgrades from 4/1 Mbps).

III. DISCUSSION

A. Request for Clarification of 3G Location Requirement

1. Legal Standard

The Commission has authority to issue a declaratory ruling to “terminate a controversy or remove uncertainty.”¹⁷ ATA brings to the Commission the uncertainty of how its members should assess whether they are “providing” 3G service to Lifeline customers who live, work, and travel within service areas that have 3G or better in some areas but not in others. A declaratory ruling or clarification order would appropriately clarify the meaning of this requirement.¹⁸

2. Discussion

The meaning of the term “provide” in the Lifeline rules is unclear as to where an ETC must provide service meeting the mobile minimum standards. The Commission’s rules state that “eligible telecommunications carriers must *provide* the minimum service levels for each offering of mobile voice service as defined in §54.408.”¹⁹ Rule 54.408 addresses minimum service standards: the “[t]he minimum service standard for mobile broadband speed . . . is the level of service which an eligible telecommunications carrier must both advertise and *provide* to an end user.”²⁰ The rules do not specify what location to analyze for purposes of determining whether

¹⁷ 5 U.S.C. § 554(e) (“The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.”); 47 C.F.R. § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”).

¹⁸ A declaratory ruling normally states what the existing legal requirements are and thus applies retroactively unless retroactive application would cause “manifest injustice.” *Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 540 (D.C. Cir. 2007).

¹⁹ 47 C.F.R. § 54.401(b)(3) (emphasis added).

²⁰ *Id.* § 54.408(a)(2) (emphasis added).

an ETC is “providing” 3G service, although the Commission has interpreted the statutory term “providing” “in a broad and flexible manner.”²¹ Yet at present, ATA members in remote Alaska offering 3G or better service in some areas and 2G or voice only service in others lack certainty as to whether and where they “provide” 3G and therefore may offer and seek reimbursement for mobile Lifeline broadband.

There are many locations relevant to a Lifeline customer in Alaska. There is the point of sale, at which the ETC verifies the customer’s eligibility and provides repairs and other customer service. This point of sale, for example, might be in a remote village with only 2G service to which the Lifeline customer has traveled for seasonal work, such as fishing, even if he or she lives in Anchorage (which has 3G or better service). There is the customer’s residential address, which must be provided to ETCs in states (such as Alaska) that do not handle certification so that the ETC can query the National Lifeline Accountability Database to verify that no other individual in the same household already receives a Lifeline benefit.²² There is the customer’s workplace or school. There are the daily and occasional travel routes that the customer takes. The *Lifeline Modernization Order* does not specify how carriers with mixed networks should assess what speed they “provide” to an individual customer.

ATA suggests that the Commission clarify that ETCs in remote Alaska whose networks offer 3G or better in at least some of their service area “provide” 3G to their customers if their customers have access to that service. “Access” here means that the ETC has provided the customer with a 3G-capable device (or has verified that the customer’s current device is 3G-capable), that the device is properly configured to use data on a 3G or better network, and that

²¹ *Lifeline Modernization Order* at 4060 ¶ 263.

²² See 47 C.F.R. § 54.404(b)(6).

the customer has been provided with information explaining where the ETC's network provides 3G or better service and where it does not. The broadband service must meet all other requirements, including the current minimum usage allowance requirement.²³

Interpreting the existing rule in this way in remote Alaska will serve the goals of the Lifeline program by ensuring that eligible consumers who need supported mobile broadband can get access to it where it exists. An interpretation that pinned 3G to a specific Alaska location would artificially exclude eligible consumers from participating. For example, a consumer's residence may be just out of range of 3G but located in a village that otherwise has robust 3G. Or the consumer may live in a 2G area but work regularly in a mining or drilling area with good 3G service. Such an interpretation would also ignore the very nature of mobile service—its defining characteristic is that it can be used from multiple locations and while in transit. ATA's suggested interpretation would acknowledge the inherently mobile nature of the service and not artificially pin its use to a location where the consumer may never even use it.

ATA respectfully asks the Commission not to delay its clarification. While ETCs can continue to collect the full amount of Lifeline reimbursement for providing qualifying voice offerings to eligible subscribers until November 30, 2019,²⁴ delaying the clarification would have several negative consequences. First, almost all ATA members offer statewide Lifeline plans; that is, they do not differentiate their plans between different service areas but offer the same

²³ We refer to 3G as the minimum speed requirement for mobile broadband but ask that the clarification apply regardless of the exact minimum speed, which may increase over time. In other words, if in the future the Commission requires a different minimum speed, ATA asks that the clarification apply in the same way: if a carrier offers the then-current minimum speed in at least part of its network, it "provides" that speed by ensuring that customers have a properly-configured device capable of using the speed and providing the customer with information about where the minimum speed is and is not available on that provider's network.

²⁴ See 47 C.F.R. § 54.403(a)(2)(ii).

bundle of services wherever they offer Lifeline service. If members cannot be fully compensated for 3G service as described above, they may need to adjust their Lifeline offerings to include differentiated plans for voice-only Lifeline service or voice and broadband Lifeline service depending on the service area. These service adjustments take significant time and effort. Second, if members must start to track a particular location for each subscriber, such as the point of sale, then map that location to the provider's network, and track whether the subscriber is a "voice only" or "voice + broadband" subscriber based on that information, members must start the work now to make changes to their internal records systems. They may also need to begin a campaign to educate customers associated with voice or 2G areas that they may no longer have access to data services even when in non-remote areas with LTE.

A far better and simpler solution is to interpret "providing" 3G to mean that the customer has access to the ETC's 3G network as described above. Not only is this more cost-efficient and administratively simple, but it also gets more broadband to more Lifeline eligible subscribers.

B. Request for Waivers of Minimum Speed Standards and the "Highest Performing Service" Requirement

1. Legal Standard

The Commission may waive its rules for "good cause shown"²⁵ and "where particular facts would make strict compliance inconsistent with the public interest."²⁶ In addition, the Commission may "take into account considerations of hardship, equity, or more effective

²⁵ See *id.* § 1.3.

²⁶ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

implementation of overall policy” on an individual basis.²⁷ The Commission acknowledged in the *Lifeline Modernization Order* that it has “previously granted certain recipients of Universal Service funding waivers from [its] minimum service standards because of infrastructure constraints.”²⁸ Specifically as to mobile broadband, the Commission stated that it “could envision that such special circumstances and public interest benefits would most likely be present in cases in which a provider seeks a waiver to apply the Lifeline benefit to the fastest mobile broadband product it offers, but that product does not meet the minimum service standards for mobile broadband due to lack of a deployed network able to achieve that standard.”²⁹

2. Mobile Wireless 3G Minimum Speed Standard

ATA requests that the Commission waive the 3G speed requirement for mobile wireless ETCs in remote Alaska where 3G service has not yet been deployed. Specifically, ATA requests that the Commission waive the 3G speed requirement for ETCs that do not yet offer 3G in any of their service areas, and ATA also requests that the Commission waive the 3G requirement for all ETCs in remote Alaska to the extent it does not see fit to provide the clarification described above.³⁰ As of December 31, 2015, only three Alaska Plan participants offer 3G or better

²⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁸ *Lifeline Modernization Order* at 4001 ¶ 108 (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663, 17,837 ¶ 533 (2011) (subsequent history omitted)).

²⁹ *Lifeline Modernization Order* at 4002 ¶ 113 (citing Letter from Chris Nierman, Senior Counsel, Federal Affairs, for General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 1-2 (filed Mar. 24, 2016) (noting that there are many areas in Alaska where the fastest mobile broadband speed available is 2G)).

³⁰ As with the request for clarification, we refer to 3G because it is the current speed standard. To the extent that the Commission requires higher speeds in the future, ATA requests that the waiver apply to the extent that a carrier has not deployed the then-current minimum speed.

service. By the five-year benchmark, seven participants will offer 3G or LTE, and by the ten-year benchmark they will have brought 3G and LTE to tens of thousands more remote Alaskans. This is tremendous progress but still leaves gaps in coverage meeting the current Lifeline minimum standard of 3G. Some of these gaps will be filled by the reverse auction to award support to unserved areas; that auction has not yet been scheduled nor the procedures finalized, leaving an open question as to when deployment in those areas may begin, much less be completed.

In the meantime, Lifeline-eligible consumers should not be consigned to a voice-only service where 2G data is available. 2G service allows users “to access online content regarding employment, education, health care, and government services.”³¹ It can support e-mail, Internet search functions, web browsing, social media applications, mapping, and other services and applications; it is “a mass-market retail service by . . . radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints.”³² Upload and download times are of course slower than with 3G or LTE service, but these applications and services are available and function. Granting Lifeline-eligible subscribers access to 2G Lifeline service where 3G is not available would help to close the Digital Divide in remote Alaska.

Without relief, ETCs must take several unpalatable steps before the amount of support for voice-only Lifeline service begins to decline on December 1, 2019.³³ First, if ETCs decide as a financial matter that they cannot include any data in plans that will be reimbursed at the voice-only rate, ETCs must begin to educate their current Lifeline subscribers about the upcoming

³¹ *Lifeline Modernization Order* at 3968 ¶ 20.

³² 47 C.F.R. § 54.400(*l*) (defining “broadband Internet access service” for purposes of the Lifeline rules).

³³ *See id.* § 54.403(a)(2)(ii).

changes to their plans. At that point, when these Lifeline customers then travel to areas with 3G or better networks, they will not have the data allowance to use 3G and LTE technology.

Second, existing Lifeline subscribers will need time to make other arrangements for connecting to the Internet (assuming other arrangements are available), which may be less convenient or useful to them than a personal Lifeline broadband service. Third, ETCs must adjust their billing and provisioning systems to accommodate these changes. Finally, ETCs would need to prepare their customers to be unable to receive mobile Lifeline service at all where support for voice-only service is phased out.

It would better serve the interests of remote Alaskans to permit ETCs to provide them 2G as a qualifying broadband service, rather than treating those areas as sunseting voice-only areas. There is no reason to put remote Alaska's mobile Lifeline subscribers in jeopardy of losing their service.

3. Fixed Broadband 4 Mbps/1 Mbps Fallback Speed Standard

In some parts of remote Alaska, fixed broadband service is available, but only at speeds below 4/1 Mbps. Under the Lifeline rules, households in these areas have no option for fixed Lifeline broadband services.

The Commission adopted an initial minimum speed standard for fixed Lifeline broadband of 10 Mbps/1 Mbps (as increased over time) but created an exception to allow ETCs that do not offer 10/1 Mbps service to offer their best performing service of at least 4/1 Mbps. The reason the Commission gave was "to ensure that providers who offer 'second-tier' service are not rewarded for failing to upgrade their networks."³⁴ This reasoning is inapposite in remote Alaska and hurts Lifeline-eligible households.

³⁴ See *id.* § 54.408(b)(1); *Lifeline Modernization Order* at 4002 ¶ 111.

First, many areas in Alaska where 4/1 Mbps service is not yet available will get such service as a result of the Alaska Plan. As of December 31, 2015, approximately 30 percent of locations in remote Alaska have no access to 4/1 Mbps service.³⁵ Through the Alaska Plan commitments, that number is cut to 13 percent by 2026. Additional locations may also become served at 4/1 Mbps or better by carriers electing A-CAM support.

Second, the Alaska Plan specifically endorsed commitments to provide speeds below 4/1 Mbps in certain areas. In doing so, the Commission recognized that in the near term, it will not be economical to provide 4/1 Mbps to these locations. Thus, there is no danger that carriers are being “rewarded” for providing “second-tier service” in the Lifeline program when the Commission has evaluated their circumstances and approved their Alaska Plan performance commitments to provide slower speeds. Indeed, the Wireline Competition Bureau approved plans that collectively will provide or maintain service at 1 Mbps/256 kbps to over 9,000 locations.³⁶

Finally, there is no policy reason justifying a result that would deny Lifeline-eligible households in remote areas access to supported fixed broadband service if those households decide that fixed broadband better meets their needs than mobile. Rather, a waiver would support the Commission’s “objective of providing robust service where available while also not precluding a subscriber from obtaining a Lifeline benefit in situations where the infrastructure does not yet support the minimum service standard.”³⁷ In remote Alaska, the Commission

³⁵ Figures are derived from the filings of carriers in remote Alaska that filed at least initial Alaska Plan performance information and commitments, and thus do not include figures relating to Alaska Communications Services where it offers service in remote Alaska. *See supra* note 6.

³⁶ *See supra* note 6.

³⁷ *Lifeline Modernization Order* at 4001 ¶ 108.

should permit ETCs to provide broadband of less than 4/1 Mbps as a Lifeline service if the ETC has not yet deployed 4/1 Mbps service.

4. “Highest Performing Service” Standard

ATA’s members also request a waiver of the Commission’s decision only to support the “highest performing service” in areas where an ETC does not offer fixed service at the current minimum speed. Together with the waiver described above in part III.B.3, this relief would permit remote Alaskan ETCs that do not offer 15/2 Mbps to offer any of their broadband services as a Lifeline service, without requiring that the service be the fastest or include the largest amount of data offered.

As explained above, for fixed services, the Commission essentially granted a blanket waiver of its requirement that fixed ETCs offer Lifeline broadband of 10/1 Mbps (increasing potentially annually). An ETC that does not offer service meeting the minimum standards, but does offer a service providing speeds of at least 4/1 Mbps, may offer as Lifeline broadband “its highest performing generally available residential offering, lexicographically ranked by:

(i) Download bandwidth; (ii) Upload bandwidth; and (iii) Usage allowance.”³⁸ The Commission adopted this exception so as not to exclude residents of areas lacking the minimum speed from the Lifeline broadband program, but created the “highest performing service” standard to prevent these Lifeline customers from receiving “second-tier” service.³⁹ The Commission’s intent was plain—“providing consumers with services that allow them to experience many of the Internet’s offerings, but not mandating the purchase of prohibitively expensive offerings.”⁴⁰ In remote

³⁸ 47 C.F.R. § 54.408(d)(3).

³⁹ *Lifeline Modernization Order* at 4002 ¶ 111.

⁴⁰ *Id.* at 3989 ¶ 71.

Alaska, unfortunately, implementation of the exception leaves many consumers without affordable choices.

As explained above, the costs of providing broadband service have the perverse effect of putting the “highest performing” service out of reach of Lifeline-eligible subscribers, who are by definition low-income. In some cases, that service costs \$300 per month or more.⁴¹ Even with the Lifeline discount, such a service is unaffordable to low-income households.

ATA asks the Commission to waive the requirement that the broadband service provided in these circumstances be the “highest performing” service. ETCs generally offer other residential broadband services at more affordable prices. For example, Bristol Bay’s offerings start at \$30, Nushagak’s offerings start at \$47.91, and UII’s offerings start at \$29.99, and these providers’ services offering 2 Mbps/256 kbps range in price from \$64.99 to \$77.23.

As with mobile broadband, the Alaska Plan will improve availability of higher-speed services. In the meantime, and for the benefit of those consumers who will not receive service meeting the then-current Lifeline minimum standard or even 4/1 Mbps, ATA suggests that the Commission should waive the requirement that ETCs provide their “highest performing” service as their Lifeline broadband offering. Specifically, ETCs should be able to permit Lifeline-eligible subscribers to apply the Lifeline discount to any available broadband offering.

This waiver will better serve remote Alaskans and the Lifeline program. First, by allowing remote Alaskans to select a broadband plan that meets their needs and their budget (as do retail customers outside the Lifeline program), the Commission affords them an opportunity

⁴¹ See, e.g., Bristol Bay Internet, <http://www.bristolbay.com/internet.html>; Nushagak Cooperative Internet, <http://www.nushtel.com/cable-internet.htm>; United Utilities, <http://www.uui-alaska.com/wp-content/uploads/2017/01/Internet-Plans-DSL-WIFI-1-2017-crop.jpg>

to obtain broadband service that they would likely otherwise not be able to obtain. Second, as the Alaska Plan improvements take hold, this waiver will become moot in areas that become served at the then-current minimum speed standard. Per the commitments of the Alaska Plan participants, the number of locations within participants' service areas served at 25/3 Mbps or better will grow from fewer than 7,000 to over 37,000 by the end of 2021, and over 53,000 by the end of 2026.⁴²

Not granting the waiver will deny remote Alaskans eligible for Lifeline access to broadband at available speeds. ATA encourages the Commission to grant the waiver expeditiously so remote Alaskans can have the best available opportunity to connect to the Internet via broadband.

⁴² See *supra* note 6.

IV. CONCLUSION

For the reasons stated above, the Commission should expeditiously clarify that a mobile wireless ETC in remote Alaska provides 3G service when it offers 3G or better in part of its service area and ensures that its customer can access that service. The Commission should also waive the 3G requirement for ETCs in remote Alaska that do not yet offer 3G or better service; ATA also asks that the Commission waive the 3G requirement for all ETCs serving remote Alaska if for some reason it denies the clarification regarding 3G service areas. For fixed ETCs that do not yet offer broadband meeting the minimum speed standards, the Commission should facilitate remote Alaskans' access to fixed broadband services by allowing Lifeline-eligible consumers to apply the Lifeline discount to broadband offerings under 4/1 Mbps when no 4/1 Mbps offering is available, and to any of the ETC's available broadband offerings.

Respectfully submitted,

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